

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 1:120. Employee Access to Federal Tax Information (FTI).

5 RELATES TO: KRS 18A.095, 131.032, 131.081, 131.130, 131.190, 131.990

6 STATUTORY AUTHORITY: KRS 42.014, 131.032(2)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.014 requires the Office of the  
8 Secretary to establish internal organization, functions and duties as necessary to fulfill the duties  
9 of the cabinet. KRS 131.032(2) requires the Department of Revenue to promulgate administrative  
10 regulations to establish requirements concerning criminal background investigations for  
11 employees, including contract staff, with access to or use of federal tax information (FTI). This  
12 administrative regulation establishes the guidelines to implement the requirements set forth in KRS  
13 131.032 and Internal Revenue Service (IRS) Publication 1075.

14 Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with  
15 the Finance and Administration Cabinet, Department of Revenue, or a contractor working on  
16 behalf of those agencies who have, or will likely have, access to federal tax information in their  
17 regular course of business.

18 (2) "Classified employee" is defined by KRS 18A.005(7).

19 (3) "Contract Staff" means an individual employed with the Finance and Administration  
20 Cabinet, Department of Revenue, or a contractor working on behalf of those agencies

1 that does not meet the definition of a classified employee with KRS Chapter 18A status.

2 (4) "Criminal background investigation" means a local, state, or national fingerprint-supported  
3 criminal history background investigation performed in accordance with KRS 131.032.

4 (5) "Department" is defined by KRS 131.010(2).

5 (6) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo  
6 contendere to any felony, misdemeanor, or offense the nature of which indicates that the employee  
7 constitutes an unreasonable and immediate risk to the security of FTI or confidential taxpayer  
8 information, unless the department determines there are mitigating circumstances that sufficiently  
9 remediate the existing risks.

10 (7) "Federally funded time-limited employee" is defined by KRS 18A.005(15).

11 (8) "Federal tax information" or "FTI" means a return or return information received directly  
12 from the IRS or obtained through an authorized secondary source, such as the Social Security  
13 Administration (SSA) or any entity acting on behalf of the IRS pursuant to an Internal Revenue  
14 Code (IRC) Section 6103 (p)(2)(B) Agreement.

15 (9) "Responsible agency" means an office within the Cabinet, Department, or an entity under  
16 contract with the cabinet or department, that employs or offers employment to an individual in a  
17 position for which the job duties include access to FTI.

18 (10) "Unclassified employee" means an employee that meets the criteria established in KRS  
19 18A.115.

20 Section 2. Requirement for Criminal Background Investigations. (1) The cabinet, department,  
21 or responsible agency shall require prospective or current employees, including contract staff,  
22 whose job duties include access to FTI, to submit to a fingerprint-based local, state, or national  
23 criminal background investigation as a condition of initial or continued employment:

1 (a) After the individual is offered a job but before they begin working; and

2 (b) At least one (1) time every five (5)~~ten (10)~~ years thereafter.

3 (2) The cabinet, department, or responsible agency that requests a fingerprint-based local, state,  
4 or national criminal background investigation on behalf of a prospective or current employee shall  
5 incur all fees associated with the cost of each background investigation requested.

6 (3) The cabinet, department, or responsible agency shall not employ any person in a position  
7 for which job duties include access to FTI or confidential taxpayer information if the individual  
8 refuses to consent to a fingerprint-based state or national criminal background investigation.

9 (4) The cabinet, department, or responsible agency shall notify each prospective or current  
10 employee determined to have a disqualifying offense.

11 Section 3. Disqualification. The cabinet, department, or responsible agency shall not employ  
12 or offer employment to an individual with a disqualifying offense listed in Section 1 of this  
13 administrative regulation or whose background investigation reveals any factor that bears upon the  
14 fitness of the individual to work in a position with access to FTI or confidential taxpayer  
15 information. The department shall have the sole discretion to determine if a prospective or current  
16 employee of the department is suitable to work in a position with access to FTI or confidential  
17 taxpayer information to ensure its protection and security in accordance with KRS 131.190, IRS  
18 Publication 1075, and Finance and Administration Cabinet Standard Procedure 6.1.2 entitled  
19 "Confidentiality of State and Federal Information".

20 Section 4. Individuals Ineligible to be Hired. The cabinet, department, or responsible agency  
21 may refuse to employ, contract with, or permit to work as an employee, any applicant that submits  
22 to a background investigation if one (1) or more of the following conditions apply:

23 (1) The applicant refuses to provide photo identification;

1 (2) The applicant fails to submit their fingerprints at an authorized collection site as directed,  
2 within five (5) business days of being offered employment;

3 (3) Upon completion of the criminal background investigation, the cabinet or department  
4 receives notice that the applicant is found to have a disqualifying offense; or

5 (4) Final and acceptable disposition of a criminal charge or offense related to a disqualifying  
6 offense is not provided to the department within sixty (60) days of fingerprint submission.

7 Section 5. Notice of a Disqualifying Offense and Appeals - Applicants. (1) The cabinet,  
8 department, or responsible agency shall notify applicants determined to have a disqualifying  
9 offense.

10 (2) If an applicant wishes to obtain information concerning the disqualifying offense or  
11 challenge the accuracy of a criminal background investigation, the department shall refer the  
12 individual to the appropriate state or federal law enforcement agency.

13 Section 6. Notice of a Disqualifying Offense and Appeals – Current Employees. (1) A current  
14 employee with classified status found to have a disqualifying offense upon completion of the  
15 criminal background investigation may be:

16 (a) Immediately removed from duties with access to FTI or confidential taxpayer information;

17 (b) Immediately placed on administrative leave pending an internal review of the disqualifying  
18 offense; or

19 (c) Dismissed from employment if the nature of the disqualifying offense presents an  
20 immediate, serious, and irreparable risk to FTI or confidential taxpayer information if the  
21 employee's job duties require access to FTI or confidential taxpayer information.

22 (2) A cabinet or department classified employee whose background investigation reveals a  
23 disqualifying offense shall be eligible for reconsideration under an internal department review

process and determination in accordance with KRS Chapter 18A.

(3) A cabinet or department classified employee may submit a written request for an internal employment reconsideration review to the Division of Human Resources no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2 of this administrative regulation.

(4) A cabinet or department classified employee who requests a reconsideration of dismissal may be retained on staff during the review process subject to the following factors:

(a) The nature and severity of the disqualifying offense;

(b) The disposition of the offense;

(c) The time elapsed since the disqualifying offense;

(d) The employee's personnel history; and

(e) Whether the employee is assigned duties that require access to FTI or confidential taxpayer information.

(5) The request for an internal employment reconsideration review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense; and

4. Any other relevant and mitigating circumstances regarding the offense;

(b) Official documentation showing that all fines, including court-imposed fines, costs, or restitution, have been paid, or documentation showing adherence to a payment schedule, if applicable;

1 (c) The date probation or parole was satisfactorily completed, if applicable; and

2 (d) Employment and character references, including any other evidence demonstrating the  
3 ability of the individual to perform the employment responsibilities and duties competently.

4 (6) After review, the department may reverse the dismissal if the department determines that  
5 the disqualifying offense, along with any mitigating circumstances, does not bear upon the fitness  
6 of the individual to work in a position with access to FTI or confidential taxpayer information.

7 (7) No later than thirty (30) calendar days from receipt of the written request for the  
8 reconsideration review, the cabinet, department, or responsible agency shall notify the employee  
9 of the final determination of the reconsideration review by the department.

10 (8) The employee may appeal the results of a reconsideration review to the Personnel Board in  
11 accordance with KRS 18A.095.

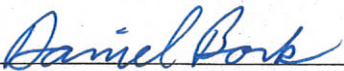
12 Section 7. Challenges to Criminal History Record Information. An individual subject to a  
13 criminal background investigation required by KRS 131.032 and this administrative regulation  
14 shall have the right to request and inspect his or her criminal history record and to request  
15 correction of any inaccurate information.

16 Section 8. Pardons, Diversions, and Expungements. An applicant, classified employee, un-  
17 classified employee, federally funded time-limited employee, or contract employee who has  
18 received a pardon for a disqualifying offense, has had a disqualifying offense dismissed after  
19 successful completion of a diversion program, or has had a disqualifying offense expunged, shall  
20 not be barred from employment in a position with job duties that include access to or use of FTI  
21 or confidential taxpayer information, for reasons related to the underlying disqualifying offense(s).



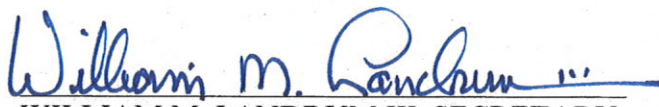
103 KAR 1:120

APPROVED BY DEPARTMENT:

  
Daniel P. Bork, Commissioner  
Department of Revenue  
Finance and Administration Cabinet

Oct 10, 2019  
Date Approved by Commissioner

APPROVED BY CABINET:

  
WILLIAM M. LANDRUM III, SECRETARY  
Finance and Administration Cabinet

14 Oct 2019  
Date Approved by Secretary

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 27, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)(email).



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 103 KAR 1:120

Contact Person: Lisa Swiger

Phone: 502-564-9526

E-mail: lisa.swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for fingerprint-based state and national criminal background investigations for prospective and current employees of the Finance and Administration Cabinet or Kentucky Department of Revenue, including contract staff, whose job duties include access to or use of Federal Tax Information (FTI).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the background investigation requirements established by IRS Publication 1075 and HB 262 from the 2017 legislative session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for a fingerprint-based state and national criminal background investigation for prospective and current employees including contract staff whose job duties include access to or use of FTI.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the process and requirements that must be met in order to be in compliance with the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment changes the requirement to complete a background investigation on current Finance & Administration Cabinet and Department of Revenue employees from every ten (10) years to every five (5) years per IRS Publication 1075.

(b) The necessity of the amendment to this administrative regulation: IRS Publication 1075 is currently being revised to require a background investigation be performed on employees with access to FTI every 5 years instead of the current 10 year requirement in this regulation. This new version is expected to be released in December, 2019.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment complies with new IRS guidelines per statutory requirement.

(d) How the amendment will assist in the effective administration of the statutes: It will allow the Finance & Administration Cabinet and the Department of Revenue to provide a greater level of protection of taxpayers confidential information by requiring an updated background check of employees more frequently and over a shorter time span (five years) than what is currently afforded under this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects prospective and current employees, including contract staff, whose job duties include access to or use of FTI in the possession of the cabinet in accordance with IRS Publication 1075 (Rev. 11-2016)

and KRS 131.032.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective and current employees including contract staff must submit to a fingerprint-based state and national background investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to current or prospective employees. The Department of Revenue will absorb the cost of all background investigations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in compliance with current state and federal requirements governing the security of FTI.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initially, the only cost to the department will be the cost to fingerprint new staff as they are hired by the cabinet and department in years 1-4 (2019-2022) at a cost of \$65 per employee.

(b) On a continuing basis: Those employees who have not had a background investigation in the previous five (5) years will be subject to a new background investigation at a cost of approximately \$65 per employee. Expenditures on a continuing basis are indeterminable because the number of employees that will be investigated each year will change based on need. All costs will be absorbed by the agency budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Budgeted Department of Revenue funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is expected to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? (explain why or why not) No. Tiering is not applicable as compliance with this administrative regulation applies equally to all employees affected by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 103 KAR 1:120

Contact Person: Lisa Swiger

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1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects prospective and current agency employees including contract staff whose job duties include access to or use of federal tax information (FTI).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. IRS Publication 1075 (Rev. 11-2016), KRS 42.014 and KRS 132.032.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department of Kentucky State Police (KSP) charges \$53 per person for a federal criminal background investigation. Initially, only checking new employees to the agency should result in minimal revenues for KSP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? By current estimates, approximately 1,000 cabinet and department staff would be expected to submit to a fingerprint investigation every fifth year. Therefore, this administrative regulation could generate approximately \$53,000 in revenue for KSP in 2023 and every 5 years thereafter.

(c) How much will it cost to administer this program for the first year? For the first year after this change is made, there will be minimal background checks needed for new employees only.

(d) How much will it cost to administer this program for subsequent years? On a continuing bases, minimal expense is expected in years 2-4 as only new employees will be checked in those years. However, all employees will be re-checked every fifth year at a cost of approximately \$65,000 (\$53 to KSP and \$12 to FBI), if costs are still \$65 per person at that time.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0.00

Expenditures (+/-): +\$65,000 every 5 years

Other Explanation

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation: 103 KAR 1:120

Contact Person: Lisa Swiger

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1. Federal statute or regulation constituting the federal mandate.

IRS Publication 1075 (Pending Revision. 12-2019), 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103

2. State compliance standards.

KRS Chapter 42 and 131.032.

3. Minimum or uniform standards contained in the federal mandate.

IRS Publication 1075 (Rev. 11-2016) requires an FBI fingerprint investigation for any individual granted access to Federal Tax Information (FTI).

26 C.F.R. 301.6103(p)(7)-1 allows the Internal Revenue Service (IRS) to terminate or suspend disclosure of returns and return information to any authorized recipient if the IRS determines that:

- (1) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure; or
- (2) The authorized recipient does not satisfactorily maintain the safeguards for protecting returns and return information, and has made no adequate plan to improve its system to maintain the safeguards satisfactorily.

26 U.S.C. 6103 pertains to the confidentiality and disclosure of returns and return information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation does not impose stricter requirements than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.